

E-272, 125/SA-90-484 GRANTING INTERIM SERVICE RIGHTS TO THE CITY OF
MARSHALL

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Patrice Vick	Commissioner

In the Matter of the Application of the City of Marshall to Adjust and Update the Assigned Service Area Maps to Incorporate an Annexed Area Presently Served by Marshall and to Clarify Interim Service Rights in Said Area

ISSUE DATE: July 31, 1990

DOCKET NO. E-272, 125/SA-90-484

ORDER GRANTING INTERIM SERVICE RIGHTS TO THE CITY OF MARSHALL

PROCEDURAL HISTORY

On June 28, 1990, the City of Marshall filed a petition asking the Commission to adjust its assigned service area boundaries to include within its service territory a parcel of land it annexed in 1974 and began serving in 1978. On the official service area map, the parcel lies within the service territory of Lyon-Lincoln Electric Cooperative (Lyon-Lincoln or the co-op). The City also initiated an eminent domain proceeding in district court to acquire the co-op's interest in the parcel.

In the same petition the City sought alternative relief in the form of a Commission Order granting the City interim authority to serve a new building under construction by the only customer in the area, the Minnesota Department of Transportation, pending Commission action on its petition to change the assigned service area maps.

Lyon-Lincoln opposed the petition, stating it had facilities in place to serve the building under construction and should be allowed to do so.

The Department of Public Service (the Department) intervened in the matter. The Department contended that the threshold issue was whether the co-op had had facilities in place to serve the annexed area on the date of annexation. The Department believed that unless that was the case, the right to serve the annexed area passed to the City upon annexation, under Minn. Stat. § 216B.44 (1988). To expedite this proceeding, however, the Department recommended requiring the parties to file affidavits on both the location of their facilities on the date of annexation and on whether the City should be granted interim authority to serve the new building.

The matter came before the Commission on July 17, 1990.

FINDINGS AND CONCLUSIONS

The Annexed Area is Receiving Service from the Co-op

Under Minn. Stat. § 216B.44 (1988) municipal utilities may extend their assigned service areas to include any areas within their municipal boundaries. If such areas are receiving service from another utility, however, the municipality must first pay appropriate compensation to the utility it intends to displace. Until compensation is paid, the displaced utility is to continue to serve existing customers within the area. The displaced utility may also serve new customers, unless the Commission, after notice and hearing, finds that such service would not be in the public interest.

The Commission has consistently interpreted the statutory phrase "receiving electric service" to include situations in which the displaced utility has facilities in place capable of serving the area. The Commission has rejected the proposition that service to an actual customer is required, because that approach fails to take into account the fact that electric utilities make investments far in advance of actual need. An actual customer test would allow a utility to make substantial investments to meet the identifiable future needs of its service area, only to have those investments stranded by a municipality's eleventh hour decision to serve. The Court of Appeals upheld this definition of "receiving electric service" in In the Matter of the Complaint by Kandiyohi Cooperative Electric Power Association against Willmar Municipal Utilities Commission for Extending Electric Facilities in and Adjacent to Westwind Estates, 455 N.W.2d 102 (Minn. Ct. App. 1990).

The material facts in regard to whether the annexed area is receiving service from the co-op are clear and undisputed. For several years the co-op has had a single phase line capable of delivering service to the construction site in place and located approximately 132 feet east of the annexed area.¹ A single phase line is capable of meeting the service needs of the construction site for at least the next six months. Under these circumstances it is clear that the co-op has facilities in place capable of serving the area and that the area is receiving service from the co-op within the meaning of the statute. The co-op is therefore entitled to serve the new building unless such service would not be in the public interest.

The Commission concludes, for the reasons set forth below, that service by the co-op would not be in the public interest.

The Interim Service Issue

The City has been serving the sole customer in the annexed area, the Department of Transportation, since 1978. The customer is satisfied with the City's service, has designed its new building to

¹ The co-op recently replaced the single phase line with a three-phase line, and extended it just beyond the east boundary of the annexed area.

receive service from the City, and has made plans to construct an underground line to the City's distribution line. The Commission has a longstanding policy against disrupting established service arrangements, which would be served by granting interim service rights to the City.

The building under construction will require three phase electric service upon completion. Since at least 1976, the City has had a three phase line running to the west boundary of the customer's property. The new building was designed to receive service from the west, from this line. The co-op would have to extend a three phase line, which is currently just beyond the property's east boundary, all across the property to the point of delivery. The statute requires the Commission to give "due consideration" to any unnecessary duplication of facilities which might result from allowing the assigned utility to serve new points of delivery. Minn. Stat. § 216B.44 (1988). Clearly, allowing the co-op to serve the new building would result in the unnecessary duplication of facilities (the three phase line) already installed by the City.

Furthermore, it is clear that the City could serve the new building at less expense to ratepayers than could the co-op, because the City already has a three phase line in place ready to deliver service.

In short, granting the co-op interim service rights would disrupt established service arrangements, result in the unnecessary duplication of facilities, and be less economical than allowing the City to serve. Under these circumstances, the Commission finds it would not be in the public interest for the co-op to serve the new building being constructed in the annexed area and will grant interim service rights to the City.

The Department's Position

The Department contended that the threshold issue in this case is whether the co-op was providing service to the annexed area on the date of annexation. The Department suggested that if the co-op was not providing service on that date, service rights passed to the City upon annexation as a matter of law. The Commission disagrees.

The statute does contemplate that municipal utilities may expand their service areas within their corporate boundaries without paying compensation if no other utility is serving. At the same time, however, the statute contemplates that assigned service areas will be clearly defined, readily discernible, and accurately on file with the Commission.

The purpose of the assigned service area statutes is to provide clarity and stability in regard to service territory boundaries. The importance the legislature attached to clear boundaries and their careful observation is underscored by the complaint process established in Minn. Stat. § 216B.43 (1988), and by the expedited time frames within which such complaints must be heard and decided.

The statute's emphasis on the integrity of service area boundaries would be seriously undermined by a statutory interpretation holding that service rights to annexed areas could pass to municipal utilities upon annexation without notice to the Commission, without a Commission finding that the

assigned utility was not serving the annexed area, and without correcting the official service area maps on which other utilities and members of the public rely.

The only reasonable interpretation of the statute is that it assumes municipalities exercising their rights to expand their assigned service areas will, at a minimum, promptly notify the Commission, to ensure the accuracy of the official service area maps. Since the City did not give notice and request amendment of the official service area maps at annexation or at any time prior to the filing of its June 28 petition, the City could not have acquired the right to serve earlier, even if the area was not receiving service from the co-op.² The threshold issue, then, is not whether the co-op was serving at annexation, but whether the co-op is serving today, which it clearly is.

Once it has been established that the co-op is serving today, the remaining issues are interim service rights and compensation. The issue of interim service rights has been resolved in this Order. The issue of compensation will be referred for contested case proceedings, in an Order which will follow.

ORDER

1. The City of Marshall's petition to adjust the assigned service area maps to reflect its annexation of the area at issue is denied.
2. The City of Marshall's petition that it be allowed to serve the new building under construction in the area at issue is granted.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)

² The area may have been receiving service from the co-op on the date of annexation or at the time the City extended service. The record states only that the single phase line 132 feet from the annexed area has been in place for "several years." The Commission need not take further evidence on that issue, however, since the area is currently receiving service from the co-op within the meaning of the statute.